

FILED
IN THE UNITED STATES DISTRICT COURT BILLINGS DIV.

FOR THE DISTRICT OF MONTANA 2007 SEP 28 AM 11 08

BUTTE DIVISION

PATRICK E. DUFFY, CLERK

BY _____

THOMAS MCLAREN and
RITA MCCLAREN

Plaintiffs,

vs.

IRS APPEALS OFFICE and
MICHAEL JEKA,

Defendants.

CV-06-53-BU-RFC

DEPUTY CLERK

**ORDER ADOPTING FINDINGS
AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE**

On September 10, 2007, United States Magistrate Judge Carolyn S. Ostby entered her Findings and Recommendation on the United States' Motion to Dismiss. *Doc. 16*. Although the United States made several arguments for dismissal, Magistrate Judge Ostby recommends the motion be granted for two reasons: (1) pursuant to Local Rule of Procedure 7.1(i) because Plaintiffs failed to respond to the motion to dismiss and such failure to respond is deemed an admission that the motion is well-taken; and (2) pursuant to Fed.R.Civ.P. 12(b)(6) because the Complaint fails to state a claim upon which relief may be granted.

Upon service of a magistrate judge's findings and recommendation, a party has 10 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the Findings and Recommendations. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449,

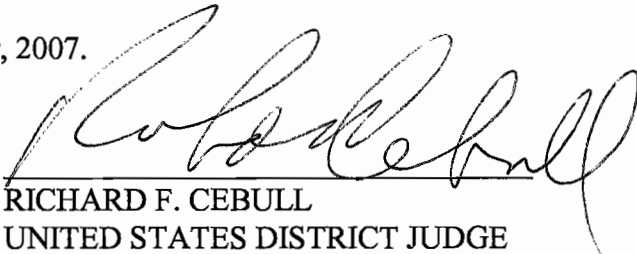
455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

In this case, Magistrate Judge Ostby correctly ruled that Liability under 26 U.S.C. § 6672 is joint and several and that the IRS is not required to seek payment from every responsible person and may assess the tax against one responsible person and not another. 14 MERTENS LAW OF FED. INCOME TAX'N § 54:105 (Sept. 2007). For those reasons, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and HEREBY ORDERED they be adopted in their entirety.

For those reasons, **IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss (*Doc. 16*) is **GRANTED**.

The Clerk of Court shall notify the parties of the entry of this Order and close this case.

DATED the 28th day of September, 2007.


RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE